

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

UNITED STATES OF AMERICA,

CR-01-99-GF-BMM

Plaintiff,

vs.

SHAWN RODRIGUEZ,

ORDER

Defendant.

United States Magistrate Judge John Johnston entered Findings and Recommendations in this matter on October 7, 2020. (Doc. 113.)

When a party makes no objections, the Court need not review *de novo* the proposed Findings and Recommendations. *Bad Old Man v. Arn*, 474 U.S. 140, 153-52 (1986). This Court will review Judge Johnston's Findings and Recommendations, however, for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981).

Judge Johnston conducted a revocation hearing on October 6, 2020. (Doc. 112.) The United States accused Rodriguez of violating his conditions of supervised release 1) by failing to report for mental health treatment; 2) by failing to follow the instructions of his probation officer; 3) by failing to report for

substance abuse treatment; 4) by possessing a controlled substance; 5) by using methamphetamine; and 6) by committing another crime. (Doc. 104.)

At the revocation hearing, Rodriguez admitted that he had violated the conditions of his supervised release 1) by failing to report for mental health treatment; and 2) by failing to report for substance abuse treatment. The Court dismissed alleged violation 1 on the government's motion. The government proved alleged violations 2, 3, 4, 5 and a portion of alleged violation 8. With respect to alleged violation 8, the government proved by a preponderance of the evidence that Rodriguez had possessed the methamphetamine on or about September 22, 2020. The government failed to prove, however, that Rodriguez possessed the methamphetamine with the intent to distribute it. (Doc. 112.) Judge Johnston found that the violations Rodriguez admitted and that the government proved are serious and warranted revocation, and recommended that Rodriguez receive a custodial sentence of 9 months with 14 months of supervised release to follow with the first 60 days of supervised release in a secure inpatient drug treatment facility. Rodriguez was advised of the 14 day objection period and his right to allocute before the undersigned.

The violations prove serious and warrant revocation of Rodriguez's supervised release. The Court finds no clear error in Judge Johnston's Findings and Recommendations.

Accordingly, **IT IS ORDERED** that Judge Johnston's Findings and Recommendations (Doc. 113) are **ADOPTED IN FULL**.

IT IS FURTHER ORDERED that Defendant Shawn Rodriguez be sentenced to 9 months with 14 months of supervised release to follow. Rodriguez should serve the first 60 days of supervised release in a secure inpatient drug treatment facility. If Rodriguez is unable to receive drug treatment at a drug treatment facility under contract with the United States Probation Office, Rodriguez should be required to make a good faith effort to obtain drug treatment from a drug treatment facility on an Indian Reservation.

DATED this 22nd day of October, 2020.



Brian Morris, Chief District Judge
United States District Court